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FROM: Aaron Waxler
REGISTRATION NUMBER: 48,027

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In re Application of

Atty. Docket

ROBERT F. HENDRIKS ET AL

NL 000630

Serial No.: 09/989,654

Art Unit: 2877

Filed: November 19, 2001

Examiner: M. LYONS

Title: INSPECTION OF SURFACES

JAN 17 2005

Commissioner for Patents
Alexandria, VA 22313-1450APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. § 1.192

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Appellants present their brief on appeal as follows:

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The real party of interest is the assignee, Koninklijke Philips Electronics N.V., and not the parties named in the above caption.

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The present invention is directed to a device for the inspection of surfaces with a laser light source (1) and a detector for detecting an intensity of light (13) that is reflected from the surface (10) to be inspected. The device also includes at least one mode filter (15) between the surface (10) and the detector (28).

THE ISSUES

- I. Whether under 35 U.S.C. § 102(b), the differences between the invention of Claims 1, 2, 9, and 10 and U.S. Patent 6,122,058 (Van Der Werf, et al.) are such that the

invention as a whole would have been anticipated when the invention was made to those of ordinary skill in the art.

PRIOR ART

1. U.S. Patent 6,122,058 (Van Der Werf)

GROUPING OF CLAIMS

With regard to the rejection of Claims 1, 2, 9, and 10 under 35 U.S.C. § 102, the claims stand or fall together.

ARGUMENT

- I. Whether under 35 U.S.C. § 102(b), the differences between the invention of Claims 1, 2, 9 and 10 and U.S. Patent 6,122,058 (Van Der Werf) are such that the invention as a whole would have been anticipated when the invention was made to those of ordinary skill in the art.

Van Der Werf fails to anticipate every element of Appellants' Claim 1, either explicitly or inherently.

Van Der Werf fails to recite or suggest a detector for detecting an intensity of light reflected off the surface to be inspected. Rather, Van Der Werf recites an interferometer which measures variations in the refractive index between a measuring beam and a laser beam. (See, e.g., Col. 17, lines 30-60) In addition, Van Der Werf requires two detectors 140 and 141 to measure refractive index variations.

The August 24, 2004 Final Office Action argues that although Van Der Werf fails to explicitly recite detecting an intensity of the light, it is inherent to the operation of a

detector in interferometry. The Office Action argues:
"[detector light intensity detection] is key in determining whether there is constructive interference... or destructive interference..." In response, Appellants respectfully note that a missing element is inherently present in a reference only if that element necessarily follows from what has been expressly described, and would be so recognized by one of skill in the art (as opposed to the examiner's expectation). Mere possibilities or even probabilities are not enough; necessity recognized by those of skill in the art is required.¹ The M.P.E.P. echoes this case law.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.

M.P.E.P. § 2112 (emphasis in original) (citations omitted).

Further, the following is also emphasized:

In relying upon the theory or inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teaching of the applied prior art.

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It is well established that a recited element or step is inherently present in a prior art reference only if that element is necessarily present or necessarily performed in that reference, and further that its presence or performance would be recognized by one of ordinary skill in the art from what has been expressly described. Second, the Office Action must provide objective evidence or cogent technical reasoning to support a contention of inherency.²

Simply because, as the Office Action alleges, Van Der Werf recites interferometry, this does not necessarily mean the detectors detect an intensity of light. Rather, Van Der Werf only recites measuring variations in the refractive index between a measuring beam and a laser beam. (See, e.g., Col. 17, lines 30-60) Interferometry can be any measurement of a change in optical characteristics of laser beam reflected from the etched surface. The detectors of Van Der Werf would then only necessarily detect the refractive index of the beam they receive. Thus Appellants respectfully traverse the inherency argument as well as the § 102 rejection of Claim 1 for at least the above reasons.

Claim 9 recites a method substantially corresponding to the device of Claim 1 and is believed patentable for at least the same reasons.

Claims 2 and 10 depend from one or another of the

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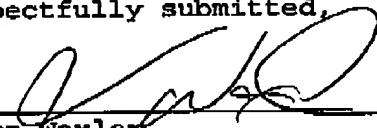
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CONCLUSION

For all of the above reasons, it is respectfully submitted that the final rejection of Claims 1, 2, 9, and 10 is in error. Accordingly, reversal of the final rejection of each of these claims is respectfully solicited.

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Respectfully submitted,

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APPENDIX

1. A device for the inspection of surfaces (10) of one or more semiconductors (14), comprising:

at least one laser light source (1);

a detector (28) for detecting an intensity of light (13) that is reflected by the surface (10) to be inspected; and

at least one mode filter (15; 15.1) between the surface (10) and the detector (28).

2. A device according to claim 1, wherein the mode filter (15; 15.1) suppresses a mode in the reflected light (13) that corresponds to a mode of the laser light source (1).

3. A device according to claim 1, wherein the mode filter comprises a beam splitter (21) which splits a light beam (13) into at least two sub-beams (13.2; 13.3) that interfere with one another.

4. A device according to claim 3, wherein the mode filter includes a device (22) for mode-selective phase shifting and one of the sub-beams (13.3) traverses the device (22) for mode-selective phase shifting.

5. A device according to claim 4, wherein the device (22) effects a phase shift of a mode through 180° overall, together

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with a difference in path length, so that the sub-beams (13.2; 13.3) interfere destructively in respect of this mode.

6. A device according to claim 5, wherein the device (22) includes a lens system (26; 27) that operates on a Guoy phase system basis so as to effect the phase shift through 180° .

7-8 (Cancelled)

9. A method for the inspection of a surface of one or more semiconductors, comprising the steps of:

irradiating said surface by means of at least one laser light source; and

detecting an intensity of light that is reflected by the surface to be inspected in at least one detector, wherein the laser light source emits light of a defined mode and that light that is reflected by the surface is guided through a mode filter.

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GROUPING OF CLAIMS

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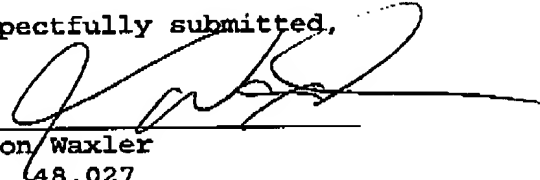
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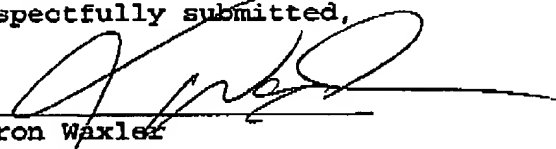
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